

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Entravision Holdings, LLC	)	File No.: EB-04-TP-161
	)	
Licensee of Station WVEA-LP	)	NAL/Acct. No.: 200532700004
Tampa, Florida	)	
Facility ID # 3602	)	FRN: 0001529627

### MEMORANDUM OPINION AND ORDER

**Adopted:** December 19, 2007

**Released:** December 21, 2007

By the Associate Chief, Enforcement Bureau:

#### I. INTRODUCTION

1. In this Memorandum Opinion and Order (“Order”), we grant in part and deny in part the petition for reconsideration filed by Entravision Holdings, LLC (“Entravision”), licensee of station WVEA-LP, 662-668 MHz, in Tampa, Florida of the *Forfeiture Order* issued February 6, 2007.<sup>1</sup> In the *Forfeiture Order*, the South Central Region (“Region”) of the Enforcement Bureau imposed a monetary forfeiture in the amount of \$25,000 on Entravision for the willful and repeated violation of Section 1.1310 of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violation involved Entravision’s failure to comply with radio frequency radiation (“RFR”) maximum permissible exposure (“MPE”) limits applicable to facilities, operations, or transmitters.

#### II. BACKGROUND

2. The RFR MPE limits, which are set forth in Section 1.1310 of the Rules, include limits for “occupational/controlled” exposure and limits for “general population/uncontrolled” exposure.<sup>3</sup> The occupational exposure limits apply in situations in which persons are exposed as a consequence of their employment, provided those persons are fully aware of the potential for exposure and can exercise control over their exposure.<sup>4</sup> The limits of occupational exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure.<sup>5</sup> The more stringent general population or public exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a

<sup>1</sup> *Entravision Holdings, LLC*, 22 FCC Rcd 2279 (EB 2007) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. § 1.1310. See also *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996), (“*Guidelines Report and Order*”) recon. granted in part, *First Memorandum Opinion and Order*, 11 FCC Rcd 17512 (1996), recon. granted in part, *Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 13494 (1997) (“*Guidelines*”).

<sup>3</sup> 47 C.F.R. § 1.1310.

<sup>4</sup> 47 C.F.R. § 1.1310, Note 1 to Table 1.

<sup>5</sup> *Id.*

consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.<sup>6</sup> Licensees can demonstrate compliance by restricting public access to areas where RFR exceeds the public MPE limits.<sup>7</sup>

3. Entravision certified WVEA-LP was in compliance with the RFR MPE limits in its application for a minor change to its licensed facility at the Park Tower Office Building (“Park Tower”) located at 400 North Tampa Street, Tampa, Florida (“WVEA-LP 2004 Modification Application”).<sup>8</sup> An exhibit to the application stated that access to the transmitting site would be restricted and properly marked with warning signs. In addition, the exhibit stated that an agreement among the licensees at Park Tower containing appropriate measures to assure worker safety would be in effect in the event that workers or authorized personnel enter the restricted area.<sup>9</sup>

4. On May 25, 2004, agents from the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”), in response to a complaint, inspected the Park Tower rooftop. Access to the main rooftop was restricted to individuals with special keycards. Signs on the rooftop access doors stated that areas on the rooftop exceed the Commission’s public RFR limits. However, the signs did not indicate which areas on the rooftop exceeded the public or general population RFR limits. The agents continued to the penthouse rooftop, which was restricted by an additional lock controlled by the front desk and accessed without passing by the warning signs on the main rooftop access doors. There were no RFR warning signs found on the penthouse rooftop, penthouse rooftop access door to the stairwell, inside the stairwell, or on the hatch itself. While surveying the penthouse rooftop, a Tampa agent, using a calibrated RFR meter, found that approximately 75% of the penthouse rooftop exceeded the general population/uncontrolled RFR MPE limit. The agent also found an unmarked and un-posted area within an 8-10 foot radius of a tower containing a UHF TV antenna, later identified as belonging to station WVEA-LP, exceeding the occupational/controlled RFR MPE limit and which also greatly exceeded the general population/uncontrolled RFR MPE limit. Park Tower’s chief engineer, who accompanied the agents on this inspection, stated he and his personnel were not aware of areas exceeding the general population and occupational limits on the penthouse rooftop pointed out to him by the agent. The building’s chief engineer stated that he and his personnel access this rooftop on a fairly regular basis to inspect it for maintenance and to conduct roofing repairs. He also stated that neither he nor any of his maintenance crew or subcontractors had received any training with respect to RFR hazards.

5. On June 18, 2004, a Tampa Office agent returned to the penthouse rooftop of Park Tower, gathered more information, and made additional measurements. The agent found power density levels in excess of the RFR MPE general population and occupational limits, similar to those detected on May 25, 2004. There were no RFR warning signs posted in the stairwell that accessed the penthouse rooftop or on the penthouse rooftop itself.

6. On July 1, 2004, the WVEA-LP station engineer accompanied Tampa agents on their inspection of the penthouse rooftop. Before conducting any testing, the station engineer stated he knew that areas near his antenna exceeded the occupational limits and that the area should have been posted

---

<sup>6</sup> 47 C.F.R. § 1.1310, Note 2 to Table 1.

<sup>7</sup> See, for example, Office of Engineering and Technology, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields* (1997) (“OET Bulletin 65”).

<sup>8</sup> File No. BPTTL-2003008ABP, granted January 20, 2004.

<sup>9</sup> Specifically, the exhibit stated that “[s]uch measures will include reducing the average exposure by spreading out the work over a longer period of time, wearing ‘accepted’ RFR protective clothing and/or RFR exposure monitors or scheduling work when the stations are at reduced power or shut down.” WVEA-LP 2004 Modification Application, RFR Exhibit at 4.

with warning signs to alert those accessing the roof of the hazard. The Tampa agents then conducted on-air and off-air measurements to determine the level of WVEA-LP's contribution. With WVEA-LP on the air, the un-posted, unmarked area near the WVEA-LP antenna exceeded the occupational/controlled RFR MPE limit and also greatly exceeded the general population/uncontrolled RFR MPE limit, consistent with the agents' May 25, 2004 measurements. When WVEA-LP was taken off the air, the agents' measurements revealed that WVEA-LP was responsible for the majority of both the general public/uncontrolled RFR MPE limit and the occupational/controlled RFR MPE limit. The agents warned the station engineer of this RFR violation. The agent informed the WVEA-LP engineer that to comply with the RFR requirements the station should post warning signs in the stairwell entrance and the rooftop to identify the areas exceeding the RFR limits, especially those exceeding the occupational limit. The agent also suggested that the station work with the building's chief engineer to restrict access to the specific area exceeding the occupational limits and only allow those having RFR training to access the area. Finally, the agent suggested that, in addition to the required RFR training, the station could offer building workers, who access the rooftop, individual RFR warning devices.

7. On July 16, 2004, Tampa agents conducted another inspection of the penthouse rooftop. Entravision placed a small, framed caution sign in the stairwell to the penthouse roof hatch that listed contact information for the station engineer. Entravision marked with yellow paint the penthouse rooftop area exceeding the occupational/controlled RFR MPE limit, but did not place warning signs on the penthouse rooftop itself. Agents conducted measurements similar to those conducted on July 1 with the four licensees located at the site.<sup>10</sup> With all four stations on the air, the area near the WVEA-LP antenna exceeded the occupational/controlled RFR MPE limit and also greatly exceeded the general population/uncontrolled RFR MPE limit, consistent with the agents' May 25, 2004, and July 1, 2004, measurements. After station WVEA-LP was taken off the air, the agents determined that WVEA-LP was responsible for the majority of RFR which exceeded both the general public/uncontrolled RFR MPE limit and the occupational/controlled RFR MPE limit. The station engineer for WVEA-LP was warned by the Tampa agents that the sign posted in the stairwell was inadequate due to its size and its poor visibility in the darkened stairwell. The agents again explained to the station engineer the RFR requirements.

8. On July 20, 2004, a Tampa agent contacted the WVEA-LP station engineer to discuss the July 16<sup>th</sup> inspection. The station engineer stated he had not yet posted a sign on the rooftop or spoken with the building's chief engineer. The agent reminded the station engineer of the station's responsibility to comply with the Commission's RFR requirements.

9. On August 17, 2004, an agent re-inspected the penthouse rooftop of Park Tower. There was no sign posted on the penthouse rooftop as requested on July 1, 16, and 20 or on the tower itself as requested on July 16, and 20. The building's chief engineer stated the WVEA-LP engineer spoke to him regarding the yellow lines painted on the roof, but had not discussed any policy to limit rooftop access only to those with RFR training.

10. On September 30, 2004, agents re-inspected the penthouse rooftop. The agents found power density levels in excess of the RFR MPE general population and occupational limits, similar to those previously detected. Entravision had placed a sign on its tower that cautioned workers that the yellow striped area exceeded safe occupational levels. The sign, however, did not list any station contact information to enable workers to inquire as to the level of the RFR on the penthouse rooftop.<sup>11</sup>

---

<sup>10</sup> Another station's transmitter was found to produce power density levels that exceeded 5% of the power density exposure limit applicable to its particular transmitter. This station is also responsible for ensuring the penthouse rooftop's compliance with the RFR limits. See 47 C.F.R. § 1.1307(b)(3).

<sup>11</sup> Such information allows workers who are fully aware of the potential for their exposure to make informed decisions and exercise control over their exposures. See 47 C.F.R. § 1.1310, Note 1 to Table 1. See also *OET Bulletin 65* at 55 – 59.

11. On November 5, 2004, the building's chief engineer contacted the Tampa office and stated that station WVEA-LP told him that the transmitter power had been reduced and the penthouse rooftop was now well below the occupational limits. Agents made measurements the same day and confirmed there were no areas on the penthouse rooftop that exceeded the occupational/controlled RFR MPE limit. There were areas, however, that were still well above the general population/uncontrolled limits.

12. On January 5, 2005, the Tampa Office issued a *NAL* to Entravision in the amount of \$25,000 for the apparent willful and repeated violation of Section 1.1310 of the Rules. Entravision filed a response to the *NAL* on February 24, 2005,<sup>12</sup> requesting that the forfeiture be cancelled or reduced. On February 6, 2007, the Region released a *Forfeiture Order* assessing a monetary forfeiture of \$25,000 against Entravision for willful and repeated violation of Section 1.1310 of the Commission's Rules by failing to comply with RFR MPE limits applicable to facilities, operations or transmitters. The Region determined that the general population MPE limit applied to the penthouse rooftop because Entravision failed to ensure that workers and employees with access to the penthouse roof where the RFR MPE was exceeded were fully aware of their potential for exposure or allowed to exercise control over that exposure. Notwithstanding Entravision's assurance to the Commission in a 2004 filing that the site would be properly marked with warning signs and appropriate measures would exist to assure worker safety, Entravision failed to appropriately erect warning signs on, and restrict access to, an area on the penthouse rooftop which exceeded the general population/uncontrolled RFR MPE limit.<sup>13</sup> The Region also rejected Entravision's assertion that its remedial actions to correct the violation after the field agent's inspection warranted a reduction in the proposed forfeiture, finding instead, Entravision's lack of prior effort to ensure worker safety particularly egregious.<sup>14</sup> The Region received Entravision's petition for reconsideration on March 8, 2007, requesting reduction or cancellation of the forfeiture.

### III. DISCUSSION

13. Reconsideration is appropriate where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts or changed circumstances not known or not existing until after the petitioner's last opportunity to present such matters.<sup>15</sup> A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.<sup>16</sup>

14. In its petition for reconsideration, Entravision takes issue with the Region's characterization of its actions. Entravision asserts that it cooperated fully with the agents from the Tampa Office and that it complied with all requests in a timely manner. Contrary to the agent's notes of the inspections, Entravision states that on July 1, 2004, the agent only asked Entravision to place a warning sign in the stairwell to the penthouse rooftop, which it did on July 1. Entravision claims that it followed-up an email with a picture of the framed caution sign with a telephone call to the agent who purportedly indicated that the sign was fine.<sup>17</sup> Entravision also states that, on its own initiative, it marked off with

---

<sup>12</sup> Entravision requested an extension to submit its response to the *NAL*, which was granted by the Region.

<sup>13</sup> *Forfeiture Order*, 22 FCC Rcd at 2284 – 2285.

<sup>14</sup> *Id.* at 2286.

<sup>15</sup> See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, ¶ 2 (Enf. Bur. 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>16</sup> *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, ¶ 2.

<sup>17</sup> Petition for Reconsideration at 4.

yellow paint the area exceeding the occupational/controlled limit on the penthouse rooftop by July 2, 2004. Entravision recalls discussing the placement of a warning sign on the penthouse rooftop on July 16, 2004, but that the agent stated this was not an urgent matter. Entravision also denies that the agent informed it on July 16 that the framed caution sign in the penthouse rooftop stairwell was inadequate. In addition, Entravision states that it informed the Park Tower landlord about the RFR on the penthouse rooftop via email on July 2, 2004. Accordingly, Entravision requests that the forfeiture be cancelled or at least reduced to the base forfeiture amount.

15. Assuming *arguendo* that Entravision's recollection of its discussions with the agent from the Tampa Office and its descriptions of its actions are correct, we find no grounds upon which to cancel the forfeiture. All of Entravision's actions with respect to the excessive RFR on the penthouse rooftop occurred after being informed of the RFR violation by the agent from the Tampa Office. As the Region stated in the *Forfeiture Order*, licensees are expected to take corrective action upon being advised of a violation, and such efforts do not warrant reduction or cancellation of the forfeiture.<sup>18</sup> Moreover, Entravision does not deny that: (1) it certified in the WVEA-LP 2004 Modification Application that access to the transmitting site would be restricted and properly marked with warning signs and that measures to assure worker safety would be in effect in the event that workers or authorized personnel enter the restricted area; (2) its transmitter was primarily responsible for RFR on the penthouse rooftop which exceeded both the general public/uncontrolled RFR MPE limit and the occupational/controlled RFR MPE limit; (3) agents from the Tampa Office measured RFR levels on the penthouse rooftop in excess of the general public/uncontrolled and occupational/controlled RFR MPE limits on May 25, June 18, and July 1, 2004; (4) prior to the start of the July 1, 2004 inspection, its station engineer stated he knew that areas near his antenna exceeded the occupational limits and that the area should have been posted with warning signs to alert those accessing the roof of the hazard;<sup>19</sup> and (5) prior to July 1, 2004, there were no RFR warning signs on or near the penthouse rooftop and no yellow markings to inform workers of the specific areas in excess of the occupational/controlled limits. Accordingly, it is undisputed that prior to July 1, 2004, workers, who entered the penthouse rooftop area and were not informed of the areas exceeding the general and occupational limits, were not fully aware of the potential for exposure and could not exercise control over their exposure. It is also undisputed that Entravision did not speak directly to any workers regarding the RFR levels on the penthouse rooftop.<sup>20</sup> Therefore, the general public/uncontrolled limits applied to the penthouse rooftop. Accordingly, Entravision willfully and repeatedly violated Section 1.1310 of the Rules by creating RFR fields in excess of the general public MPE limits and failing to adequately warn workers of the danger.

16. Entravision also asserts that the requirements contained in Section 1.1310 of the Rules are not yet universally understood, due to a pending rulemaking, and cannot be construed as imposing training requirements upon licensees as an official enforceable RFR obligation. Entravision argues that because the pending 2003 rulemaking proposes to explain in a note to Section 1.1310 of the Rules that "fully aware" means that an exposed individual has received written and verbal information concerning the potential for RF exposure and has received training regarding appropriate work practices relating to

---

<sup>18</sup> *Forfeiture Order*, 22 FCC Rcd at 2285 – 2286. See *Radio X Broadcasting Corporation*, 21 FCC Rcd 12209 (2006); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866 (2002).

<sup>19</sup> The *Forfeiture Order* stated that Entravision was apparently not even aware of the RFR issues on the penthouse rooftop until it was contacted by a Tampa agent to arrange the July 1, 2004, inspection. However, the background sections of the *Forfeiture Order* and the *NAL* state that on July 1, 2004, before conducting any testing, the station engineer stated he knew that areas near his antenna exceeded the occupational limits and that the area should have been posted with warning signs to alert those accessing the roof of the hazard.

<sup>20</sup> Entravision asserts it contacted the Park Tower landlord and the building's Chief Engineer prior to the July inspections. The building's Chief Engineer claims he had no knowledge of the areas on the penthouse rooftop exceeding the general and occupational MPE limits prior to May 25.



controlling or mitigating his or her exposure, the Commission cannot impose a civil liability on a licensee based on that uncertain standard.<sup>21</sup> We disagree that the Region held Entravision to an uncertain or unenforceable standard or that the Region based its determination of liability on a proposed standard.

17. The RFR rules were adopted by the Commission in 1996, licensee responsibilities were reiterated and clarified by the Commission in 1997, compliance guidance was provided by the Commission's Office of Engineering and Technology ("OET") in 1997, public notice of the deadline for all licensees to be in compliance with the MPE standards was provided in 2000, and the first civil liability for violation of these rules was proposed in 2002.<sup>22</sup> These important public safety and environmental rules have very specific maximum permissible exposure limits for two specifically defined populations.<sup>23</sup> The occupational exposure limits apply in situations in which persons are exposed as a consequence of their employment, provided those persons are fully aware of the potential for exposure and can exercise control over their exposure.<sup>24</sup> The limits of occupational exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. The more stringent general population or public exposure limits apply in situations in which the general public may be exposed, or in which persons exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.<sup>25</sup>

18. That the Commission proposed to explain that "fully aware" for a worker means receipt of verbal and written information and also training on mitigating and controlling exposure, does not alter the basic requirement that has existed in the rules since 1996, and for which compliance guidance was provided by the Commission in 1997. In *OET Bulletin 65*, the OET published guidance for Commission licensees concerning controlling exposure to RF fields. When dealing with compliance with the

---

<sup>21</sup> Petition for Reconsideration at 8-9; *Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, Notice of Proposed Rulemaking, 18 FCC Rcd 13187, 13201 (2003).

<sup>22</sup> See 47 C.F.R. §§ 1.1307, 1.1310; *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Report and Order*, ET Docket No. 93-62, 11 FCC Rcd 15123 (1996), *recon. granted in part, First Memorandum Opinion and Order*, 11 FCC Rcd 17512 (1996), *recon. granted in part, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 12 FCC Rcd 13494 (1997); *OET Bulletin 65*. See also, *Public Notice*, Year 2000 Deadline for Compliance with Commission's Regulations Regarding Human Exposure to Radiofrequency Emissions (released Feb. 25, 2000); *Public Notice*, Erratum to February 25, 2000 Public Notice, 15 FCC Rcd 13600 (2000); *Public Notice*, Reminder of September 1, 2000, Deadline for Compliance with Regulations for Human Exposure to Radiofrequency Emissions, 15 FCC Rcd 18900 (2000); *A-O Broadcasting, Inc.*, 17 FCC Rcd 24184 (2002) (subsequent history omitted); *Americom Las Vegas Limited Partnership*, 17 FCC Rcd 23689 (EB 2002) (subsequent history omitted); *AMFM Radio Licenses, LLC*, 18 FCC Rcd 22769 (2003) (subsequent history omitted).

<sup>23</sup> See 47 C.F.R. § 1.1310, Table 1. The MPE limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements ("NCRP") in "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," NCRP Report No. 86, Sections 17.4.1, 17.4.1.1., 17.4.2, and 17.4.3 (1986). In the frequency range from 100 MHz to 1500 MHz, the MPE limits are also generally based on guidelines contained in the RF safety standard developed by the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") and adopted by the American National Standards Institute ("ANSI") in Section 4.1 of "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," ANSI/IEEE C95.1-1992 (1992). Table 1 in Section 1.1310 of the Rules provides that the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 30 MHz to 300 MHz is 0.200 mW/cm<sup>2</sup> and the general population RFR maximum permissible exposure limit for a station operating in the frequency range of 300 MHz to 1500 MHz is  $f/1500$  mW/cm<sup>2</sup> which for station KWHY-TV operating on 512 - 518 MHz is 0.345 mW/cm<sup>2</sup>.

<sup>24</sup> 47 C.F.R. § 1.1310, Note 1 to Table 1.

<sup>25</sup> 47 C.F.R. § 1.1310, Note 2 to Table 1.

Commission's public MPE limit, the OET stated that:

Restricting access is usually the simplest means of controlling exposure to areas where high RF levels may be present. Methods of doing this include fencing and posting such areas or locking out unauthorized persons in areas, such as rooftop locations, where this is practical. There may be situations where RF levels may exceed the MPE limits for the general public in remote areas, such as mountain tops, that could conceivably be accessible but are not likely to be visited by the public. In such cases, common sense should dictate how compliance is to be achieved. If the area of concern is properly marked by appropriate warning signs, fencing or the erection of other permanent barriers may not be necessary.<sup>26</sup>

Moreover, the Commission stated in 1997 that "responsibilities pertaining to RF electromagnetic fields properly belong[] with our licensees and applicants, rather than with site owners."<sup>27</sup> Consequently, we cannot accept Entravision's attempt to obfuscate its responsibilities by suggesting that the Region held it liable for a civil forfeiture for failing to provide written and verbal information and training to all workers potentially exposed to RF on the penthouse rooftop. The critical facts are not in dispute. Prior to the inspection, Entravision placed a warning sign at the entrance to the main rooftop and had a conversation with the Park Tower building management about the "RFR on the roof." The warning sign was not near the separate entrance to the penthouse rooftop and did not specify which areas on the main rooftop or penthouse rooftop exceeded the general limits. Thus, this written sign could not provide basic awareness of the nature of the RFR levels on the *penthouse* rooftop. Other than the existence of the sign leading to the main rooftop, and conversations with the Park Tower building management, Entravision failed to produce any evidence that it ensured that affected workers and employees had awareness of the high RFR fields on the penthouse rooftop, let alone that the affected workers and employees were "fully aware" of their potential exposure. Therefore, the fact that the Commission has proposed to explicitly define "fully aware" in a rulemaking is irrelevant to the Region's finding that Entravision violated Section 1.1310 of the Rules. Entravision violated the rules because it failed to provide workers *any* awareness of the RFR on the penthouse rooftop, not because it failed to provide RFR training to workers.

19. Entravision also argues that civil liability is not appropriate where the standards in question are too uncertain to be properly enforceable,<sup>28</sup> and cites to *Rollins Environmental Services, Inc., v. Environmental Protection Agency*<sup>29</sup> ("Rollins") and *Diamond Roofing Company v. Occupational Safety and Health Review Commission*<sup>30</sup> ("Diamond"). Both cases, however are distinguishable from the instant case. In *Rollins*, the United States Court of Appeals for the District of Columbia Circuit found that a \$25,000 penalty imposed upon Rollins Environmental Services by the EPA was not justified because it penalized Rollins for violating a rule without first providing adequate notice of the substance of the rule.<sup>31</sup> In *Diamond*, the United States Court of Appeals for the Fifth Circuit determined that a citation issued against Diamond Roofing Company by the Secretary of Labor must be vacated because the Secretary

---

<sup>26</sup> *OET Bulletin 65* at 53 (footnotes omitted).

<sup>27</sup> *RF Second Memorandum Opinion and Order*, 12 FCC Rcd at 13522 (1997); *Radio One Licenses, LLC*, 21 FCC Rcd 14271, 14277 (2006).

<sup>28</sup> Petition for Reconsideration at 9.

<sup>29</sup> 937 F.2d 649 (D.C. Cir. 1991).

<sup>30</sup> 528 F.2d 645 (5<sup>th</sup> Cir. 1976).

<sup>31</sup> 937 F.2d at 654.

failed to state with ascertainable certainty what was meant by the regulations at issue.<sup>32</sup> Specifically, Diamond was cited for failing to install a guardrail on an “open-sided roof” when the phrase “open-sided roof” was not contained in the regulation which required the installation of the guardrail. In the present case, as detailed above, the Commission has made it clear with ascertainable certainty, in both Section 1.1310 of the Rules, and in its published guidance, that workers must be made fully aware of the potential for exposure and must be able to exercise control over their exposure. The Commission has published guidance that this can be achieved by appropriate signage at an area or by restricting access to that area, or both. Because Entravision had notice of these requirements, and failed to successfully do either, we find that neither *Rollins* nor *Diamond* compels us to reduce or cancel the forfeiture assessed by the Region.

20. Finally, Entravision asserts that its forfeiture should be reduced, because its case is similar to Infinity Broadcasting, a licensee, which maintains a transmitter on the penthouse rooftop and which received a \$10,000 forfeiture for violating Section 1.1310 of the Rules.<sup>33</sup> Entravision also argues that the Region failed to take into consideration its good faith efforts to comply with the Commission’s Rules. We disagree that that Region failed to take Entravision’s efforts into consideration. In the *Forfeiture Order*, the Region specifically stated that it declined to reduce the forfeiture amount based on Entravision’s good faith efforts because all of Entravision’s good faith “efforts took place after, and because of, inspections by the Tampa agents.”<sup>34</sup> However, we agree with Entravision that the appropriate forfeiture amount here is \$10,000. This is consistent with the Commission’s determination in other RFR enforcement actions.<sup>35</sup> Consequently, we reduce the forfeiture amount to \$10,000.

21. We have considered the arguments raised by the Entravision in its petition for reconsideration. We grant that petition to the extent indicated herein and deny it all other respects.

## V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>36</sup> and Section 1.106 of the Commission’s Rules,<sup>37</sup> Entravision Holdings, LLC’s petition for reconsideration of the February 6, 2007 *Forfeiture Order* **IS** hereby **GRANTED IN PART AND DENIED IN PART**.

23. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>38</sup> Entravision Holdings, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 1.1310 of the Rules.

24. Payment of the \$10,000 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period

---

<sup>32</sup> 528 F.2d at 649.

<sup>33</sup> See *Infinity Broadcasting Corporation of Florida*, 22 FCC Rcd 2288 (EB 2007).

<sup>34</sup> *Forfeiture Order*, 22 FCC Rcd at 2286.

<sup>35</sup> *Radio One Licenses, LLC*, 21 FCC Rcd 14271, 14278 (2006).

<sup>36</sup> 47 U.S.C. § 405.

<sup>37</sup> 47 C.F.R. § 1.106.

<sup>38</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).



specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>39</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the "Federal Communications Commission." The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>40</sup>

25. **IT IS FURTHER ORDERED** that this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Entravision Holdings, LLC at its address of record and its counsel, Barry Friedman, Thompson Hine LLP, 1920 N Street NW, Suite 800, Washington, DC 20036.

#### FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Associate Chief, Enforcement Bureau

---

<sup>39</sup> 47 U.S.C. § 504(a).

<sup>40</sup> See 47 C.F.R. § 1.1914.